

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

**In Re: Sherry L. Poucher
Michael S. Cole**

**File No.: OCI-OWTS-14-285
AAD No.: 20-006/IE**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Shery L. Poucher and Michael S. Cole (“Respondents”). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws (“R.I. Gen. Laws”) for the purpose of resolving the alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondents by RIDEM on 2 January 2020.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 14 Sea View Avenue, Assessor’s Plat 68, Lot 181 in the Town of North Kingstown, Rhode Island (the “Property”).
- (2) WHEREAS, Respondents own the Property.
- (3) WHEREAS, on 2 January 2020, RIDEM issued a NOV to Respondents alleging certain violations of the *Rhode Island Cesspool Act of 2007* and the Rhode Island Code of Regulations titled *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (250-RICR-150-10-6)* (the “OWTS Regulations”).
- (4) WHEREAS, Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, RIDEM extended the approval that was issued by RIDEM to Respondents to replace the cesspools on the Property with a new onsite wastewater treatment system under application number 0523-1706 (the “Approval”). The
- (6) WHEREAS, the Administrative Adjudication Division is a division of RIDEM.
- (7) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and Respondents hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.

- (8) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the *Rhode Island Cesspool Act of 2007* and the OWTS Regulations.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. and R.I. Gen. Laws Section 42-17.7-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – **Within 10 days of the receipt of the fully executed Agreement from RIDEM**, Respondents shall record this Agreement with the Town of North Kingstown, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. Upon receipt of a copy of the recorded Agreement, RIDEM shall issue a Release of the NOV to Respondents for recording. The recordings shall be at the sole expense of Respondents.
- (5) CONDITIONS –
- (a) **By 30 June 2020**, Respondents shall complete the work required under the Approval, as evidenced by the issuance of a Certificate of Conformance by RIDEM to Respondents.
- (b) Penalty – Respondents shall pay to RIDEM the sum of **\$3,000** in administrative penalties assessed as follows:
- (i) **Upon execution of this Agreement by Respondents**, Respondents shall pay to RIDEM the sum of **\$ 3,000**.
- (ii) Penalties that Respondents agree to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (iii) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Program***. All payments shall be delivered to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV. Upon Respondents successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the Agreement to Respondents for recording. The recording shall be at the sole expense of Respondents.
- (2) FAILURE TO COMPLY – If Respondents fail to comply with items specified in subsection C (5)(a) of the Agreement, Respondents shall pay a stipulated penalty of \$500 per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by statute or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Respondents may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondents from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.

- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Stephen Tyrrell, Supervising Environmental Scientist

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360 ext. 7406

stephen.tyrrell@dem.ri.gov

Tricia Quest, Esquire

RIDEM Office of Legal Services

235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607 ext. 2408

tricia.quest@dem.ri.gov

Sherry L. Poucher

16 Sea View Avenue

North Kingstown, RI 02852

(401) 222-7727

noblemouse@gmail.com

Michael S. Cole

16 Sea View Avenue

North Kingstown, RI 02852

(401)419-3545

noblemouse@gmail.com

- (a) At any time prior to full compliance with the terms of this Agreement, Respondents agree to notify RIDEM in writing of any change in ownership of the Property and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.

(10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

Sherry L. Poucher

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2020, before me personally appeared Sherry L. Poucher to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

Notary Public
My Commission Expires: _____

Michael S. Cole

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2020, before me personally appeared Michael S. Cole to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____